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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ______ DEPUTY

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INTERACTIVE DATA CORP. and
INTERACTIVE DATA PRICING AND
REFERENCE DATA, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

DODGER, INC.; GOLD, INC.; BORUJ, INC.; and SALOMON HELFON TUACHI, Petitioners, v. INTERACTIVE DATA CORP.; INTERACTIVE DATA PRICING AND REFERENCE DATA, INC.; and DOES 1 through 10, Inclusive, Respondents.	CASE NO. '08 CV 1476 JM POR **ANSWER OF RESPONDENTS INTERACTIVE DATA CORP. AND INTERACTIVE PRICING AND REFERENCE DATA, INC.**

Respondents INTERACTIVE DATA CORP. ("IDCO") and INTERACTIVE DATA PRICING AND REFERENCE DATA, INC. ("PRD") (collectively, "Respondents"), hereby answer the Petition for Order to Show Cause re Contempt for Failure to Comply with Subpoena Issued by FINRA Arbitrator (the "Petition") as set forth below.[1]

[1] Respondents have removed this action from the Superior Court of the State of California for the County of San Diego, Case No. 37-2008-00056017-CU-PT:NC.

1. Respondents lack knowledge or information sufficient to form a belief regarding the allegations set forth in paragraph 1 of the Petition.

2. Respondents deny that Respondent IDCO is also known as PRD, and further deny that either entity has an office in the County of San Diego. Respondents admit the remaining allegations contained in paragraph 2 of the Petition.

3. Respondents lack knowledge or information sufficient to form a belief regarding the allegations set forth in paragraph 3 of the Petition, except that Respondents admit that they are aware of the existence of the subject arbitration proceeding so-titled.

4. Respondents lack knowledge or information sufficient to form a belief regarding the allegations set forth in the first sentence of paragraph four of the Petition. Respondents admit the allegation contained in the second sentence of paragraph four of the Petition.

5. Respondents lack knowledge or information sufficient to form a belief regarding the allegations set forth in paragraph 5 of the Petition.

6. Respondents admit that PRD provides pricing information on securities, but otherwise lack knowledge or information sufficient to form a belief regarding the allegations set forth in paragraph 6 of the Petition.

7. Respondents lack knowledge or information sufficient to form a belief regarding the allegations set forth in paragraph 7 of the Petition.

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8. Respondents admit the allegation set forth in paragraph 8 of the Petition. Respondents further state that, as they are not parties to the FINRA arbitration, they did not have the opportunity to object to any aspect of the subpoena before the Chairman or the arbitration panel.

9. Respondents admit that they received the subpoena. Respondents otherwise deny the allegations set forth in paragraph 9 of the Petition, as the Chairman and the arbitration panel did not have the authority to issue a subpoena for pre-hearing discovery to Respondents, who are non-parties to a FINRA arbitration subject to the Federal Arbitration Act ("the FAA"). 9 U.S.C. § 7.

10. Respondents state that the letter referenced in paragraph 10 of the Petition, and attached as Exhibit E to the accompanying Declaration of Counsel, speaks for itself. Respondents further state that the subpoena is unenforceable as a subpoena for pre-hearing discovery to non-parties in aid of a FINRA arbitration subject to the FAA. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, on information and belief, Petitioners have already received a large volume of the information they seek from parties to the arbitration.

11. Respondents state that the letter referenced in paragraph 11 of the Petition, and attached as Exhibit F to the accompanying Declaration of Counsel, speaks for itself.

12. Respondents state that the letter referenced in paragraph 12 of the Petition, and attached as Exhibit G to the accompanying Declaration of Counsel, speaks for itself. Respondents further state that the subpoena is unenforceable as a subpoena for pre-hearing discovery to non-parties in aid of a FINRA arbitration

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subject to the FAA. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, at the request of counsel for Petitioners, Respondents provided further, detailed information regarding the undue burden and expense that responding to the subpoena would impose upon them in the June 10, 2008, letter referenced in paragraph 12 of the Petition. Respondents further state that, on information and belief, Petitioners have already received a large volume of the information they seek from parties to the arbitration.

13. Respondents state that the letter referenced in paragraph 13 of the Petition, and attached as Exhibit H to the accompanying Declaration of Counsel, speaks for itself.

14. Respondents state that the letter referenced in paragraph 14 of the Petition, and attached as Exhibit I to the accompanying Declaration of Counsel, speaks for itself. Respondents further state that the subpoena is unenforceable as a subpoena for pre-hearing discovery to non-parties in aid of a FINRA arbitration subject to the FAA. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, on information and belief, Petitioners have already received a large volume of the information they seek from parties to the arbitration.

15. Respondents state that the allegations set forth in paragraph 15 of the Petition purport to state a legal conclusion as to which no response is required. To the extent a response is required, Respondents deny the allegation set forth in paragraph 15 of the Petition and state that the FINRA arbitration is subject to the FAA.

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16. Respondents state that the allegations set forth in paragraph 16 of the Petition purport to state a legal conclusion as to which no response is required. Further answering, Respondents state that the FINRA arbitration is subject to the FAA and the subpoena is therefore unenforceable as a subpoena for pre-hearing discovery to non-parties. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, on information and belief, Petitioners have already received a large volume of the information they seek from parties to the arbitration.

17. Respondents state that the allegations set forth in paragraph 17 of the Petition purport to state a legal conclusion as to which no response is required and, moreover, that the provisions referenced and quoted in paragraph 17 of the Petition speak for themselves. Further answering, Respondents state that the FINRA arbitration is subject to the FAA and the subpoena is therefore unenforceable as a subpoena for pre-hearing discovery to non-parties. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, on information and belief, Petitioners have already received a large volume of the information they seek from parties to the arbitration.

18. As non-parties to the arbitration, Respondents lack knowledge or information sufficient to form a belief about the allegations set forth in paragraph 18 of the Petition. Further answering, Respondents state that the FINRA arbitration is subject to the FAA and the subpoena is therefore unenforceable as a subpoena for pre-hearing discovery to non-parties. 9 U.S.C. § 7. Respondents further state that the subpoena is overly broad and unduly burdensome, and that, on information and belief, Petitioners have already received a large volume the information they seek from parties to the arbitration.

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AFFIRMATIVE AND ADDITIONAL DEFENSES

FIRST DEFENSE

The subpoena is unenforceable, as it purports to seek pre-hearing discovery from non-parties in connection with a FINRA arbitration proceeding subject to the FAA. 9 U.S.C. § 7. While an arbitrator may issue subpoenas requiring non-parties to appear at and bring documents to an arbitration hearing, arbitrators do not have the power to require non-parties to submit to pre-hearing discovery. See Hay Group, Inc. v. E.B.S. Acquisition Corp., 360 F.3d 404, 411 (3rd Cir. 2004) (holding that an arbitration panel does not have the power to issue a subpoena for pre-hearing document production from a non-party); COMSAT Corp. v. Nat'l Sci. Found., 190 F.3d 269, 276 (4th Cir. 1999) (holding that the arbitrator did not have the power to issue a subpoena for pre-hearing discovery from a non-party in the absence of special need).

SECOND DEFENSE

The subpoena is overly broad, unduly burdensome, and compliance with it would be enormously and unreasonably costly. Indeed, the subpoena seeks a vast volume of documents from Respondents and, as set forth more fully in the Declaration of Sigal Lewkowicz filed in support of Respondents' Notice of Removal, producing documents in response to the subpoena would cost Respondents well over $1.6 million and result in substantial and unnecessary disruption of their business. See Fed. R. Civ. P. 45(c)(1) ("A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply.").

THIRD DEFENSE

The time provided for responding to the subpoena – two business days – was unreasonably short.

FOURTH DEFENSE

Enforcement of the arbitration subpoena, at substantial burden and expense to Respondents, is unnecessary, as Petitioners have received a large volume of the information they seek from parties to the arbitration. Since the subpoena was issued in April 2008, Respondents have reason to believe that National Financial Services LLC ("NFS"), a respondent in the arbitration proceeding, has produced approximately 35,000 documents relating to pricing to Petitioners, as well as all of the agreements between NFS and PRD dating back to 1997. These documents were produced in June and July of this year, subsequent to the subpoena's issuance and, on information and belief, subsequent to the arbitration panel's issuance of the subpoena to IDCO and PRD. Given Petitioners' receipt of a vast number of documents that are responsive to the subpoena from a party to the arbitration and the fact that the documents relevant to Petitioners' claims are in the possession of parties to the arbitration, enforcement of the subpoena as against non-parties, at enormous burden and expense, is unnecessary.

FIFTH DEFENSE

The subpoena seeks the discovery of trade secrets and other proprietary information.

SIXTH DEFENSE

The Petition fails to state, in whole or in part, a claim on which relief can be granted.

SEVENTH DEFENSE

Respondents reserve the right to amend this answer to add all matters that may constitute an affirmative or additional defense.

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Attorneys At Law
Los Angeles

WHEREFORE, Respondents Interactive Data Corp. and Interactive Data Pricing and Reference Data, Inc., respectfully request that this Honorable Court:

1. Enter judgment in favor of Respondents;

2. Award Respondents their costs and fees as provided by law and, if, contrary to law, the Court orders that Respondents must comply with any aspect of Petitioners' subpoena, award Respondents their costs and fees associated with such compliance; and

3. Award such further relief in favor of Respondents as this Court deems just.

RESPONDENTS RESPECTFULLY REQUEST THAT THE COURT ALLOW ORAL ARGUMENT, AND PERMIT BRIEFING IN ADVANCE THEREOF, BEFORE RENDERING A DECISION IN CONNECTION WITH THE MATTERS SET FORTH IN THE PETITION AND THIS ANSWER.

McDermott Will & Emery LLP
Attorneys At Law
Los Angeles

Dated: August 13, 2008

McDERMOTT WILL & EMERY LLP

By: [signature]
Brandon J. Roker
Attorneys for Respondents
Interactive Data Corp. and Interactive Data Pricing and Reference Data, Inc.

McDermott Will & Emery LLP
Attorneys At Law
Los Angeles

PROOF OF SERVICE BY MAIL
FRCP 5(b)(1)(C)
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 3800, Los Angeles, California 90067-3218.

On **August 13, 2008**, I served the foregoing document described as **ANSWER OF RESPONDENTS INTERACTIVE DATA CORP. AND INTERACTIVE PRICING AND REFERENCE DATA, INC.** on the interested parties of record in the action by:

☐ placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

☒ placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Brian D. Miller, Esq.
Bradd L. Milove, Esq.
Christopher J. Hayes, Esq.
Miller & Milove
7825 Fay Avenue, Suite 200
La Jolla, CA 92037

☒ **BY MAIL**

☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on **August 13, 2008**, at Los Angeles, California.

Bernadette W. Nembhard — *Bernadette W. Nembhard* (signature)

PROOF OF SERVICE BY FEDERAL EXPRESS
FRCP 5(b)(1)(F)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 3400, Los Angeles, California 90067.

On **August 13, 2008**, I served the foregoing document described as **ANSWER OF RESPONDENTS INTERACTIVE DATA CORP. AND INTERACTIVE PRICING AND REFERENCE DATA, INC.** on the interested parties of record in the action by placing a true copy thereof enclosed in a sealed Federal Express envelope addressed as follows:

Brian d. Miller, Esq.
Bradd L. Milove, Esq.
Christopher J. Hayes, Esq.
Miller & Milove
7825 Fay Avenue, Suite 200
La Jolla, CA 92037

I am "readily familiar" with the firm's practice of collection and processing correspondence for delivery by Federal Express. Under that practice it would be deposited for collection by Federal Express on that same day with fees thereon fully prepaid at Los Angeles, California in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on **August 13, 2008**, at Los Angeles, California.

Bernadette W. Nembhard — Bernadette W. Nembhard (signature)